

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CLARKE AND REBECCA WIXON, et al.

Plaintiffs,

No. C 07-02361 JSW

v.

WYNDAM RESORT DEVELOPMENT CO.
(f/k/a TRENDWEST RESORTS, INC.), et al.

**NOTICE OF QUESTIONS FOR
HEARING**

Defendants.

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE
NOTICE OF THE FOLLOWING QUESTIONS FOR THE HEARING SCHEDULED ON
APRIL 11, 2008, AT 9:00 A.M.:

The Court has reviewed the parties' memoranda of points and authorities and, thus, does not wish to hear the parties reargue matters addressed in those pleadings. If the parties intend to rely on legal authorities not cited in their briefs, they are ORDERED to notify the Court and opposing counsel of these authorities reasonably in advance of the hearing and to make copies available at the hearing. If the parties submit such additional authorities, they are ORDERED to submit the citations to the authorities only, with pin cites and without argument or additional briefing. *Cf.* N.D. Civil Local Rule 7-3(d). The parties will be given the opportunity at oral argument to explain their reliance on such authority.

Each party shall have (20) minutes to address the following questions:

Motion to Dismiss for Lack of Personal Jurisdiction

1. Is the Court correct that Plaintiffs concede general jurisdiction is not applicable in this case?
2. In support of their “purposeful availment” argument, Plaintiffs assert that the Director Defendants published candidate statements and other information and solicited votes from Worldmark members in California. How does Plaintiffs’ breach of fiduciary duty claim arise out of these activities?
3. Plaintiffs refer generally to Exhibits 2-6 of the Pritzker Declaration to support the statements at page 18, lines 11-15 of their opposition brief. What specific references in those exhibits support these statements?

Motions to Dismiss for Failure to State a Claim

4. Plaintiffs contend that the Court need not determine whether their claims are direct or derivative on the ground that have contractual and statutory rights to bring these claims. Do Plaintiffs have any authority to support the proposition that, in such a situation, the Court should overlook what otherwise might be derivative claims?
5.
 - a. Would Plaintiffs agree that the Declaratory Relief claim is somewhat ambiguous given that the introductory paragraph refers to all Defendants, but in the subsequent paragraphs the allegations refer only to Wyndham?
 - b. Would the Director Defendants agree that, assuming the Court denies the motion to dismiss for personal jurisdiction and concludes that the action is direct, this alleged defect could be cured by amendment?
6. The Director Defendants assert that Articles 7.1 and 7.2 of the Declaration do not permit these claims. That assertion is premised upon the assumption that the claims are derivative. If the Court concludes that the action is a direct action, do the Director Defendants concede these provisions permit Plaintiffs to bring some, if not all, of these claims? If not, on what basis?

1 a. What is Plaintiffs' response to the Director Defendants' contention that the
2 Amended Complaint does not set forth facts showing a violation of "the Articles,
3 Bylaws, Rules or any valid resolution of the Board?" (Reply Br. at 2:21-26.)

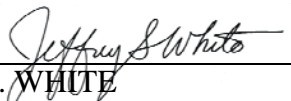
4 7. One of Plaintiffs' allegations is that Wyndham designed its TravelShare program "to
5 create an artificial distinction between Vacation Credits purchased from Wyndham and
6 those purchased on the resale market." (Am. Compl., ¶ 44.) What is Defendants' best
7 argument that the alleged injury from this conduct is an injury to Worldmark, rather than
8 Worldmark members who can no longer resell their Vacation Credits?

9 8. With respect to the CLRA claim, why are Vacation Credits not like a certificate or
10 coupon? *See* Cal. Civ. Code sec. 1761(a).

11 9. Are there any other issues the parties wish to address?

12 **IT IS SO ORDERED.**

13
14 Dated: April 9, 2008



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE